

Lawrence H. Meuers, Esq.  
(SBN: 197663)  
MEUERS LAW FIRM, P.L.  
5395 Park Central Court  
Naples, Florida 34109  
Tel: (239) 513-9191

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

\*E-FILED - 5/10/05\*

C&R FRESH LLC, *et al.*,

**Plaintiffs,**

**vs.**

JAVIER VAZQUEZ d/b/a LA  
ESPERANZA PRODUCE; *et al.*,

**Defendants.**

Case No.: 5:05-cv-01458-RMW

**PRELIMINARY  
INJUNCTION ORDER**

Plaintiffs' Motion for Preliminary Injunction under the Federal Rules of Civil Procedure 65(a), came before this Court on Friday, April 29, 2005 at 9:00 a.m., after proper notice was issued. Counsel for the Plaintiffs appeared telephonically. Defendants failed to appear, despite having been properly served with notice of this hearing.

On or about April 11, 2005, Plaintiffs commenced the above entitled action against Javier Vazquez d/b/a La Esperanza and David B. Vazquez (collectively

1 referred to as the “Defendants”), seeking to enforce payment from the statutory  
2 trust imposed by the Perishable Agricultural Commodities Act, 1930, as  
3 amended, 7 U.S.C. §499e(c)(2) (“PACA”). As part of their action, the Plaintiffs  
4 sought injunctive relief against the Defendants to enjoin and restrain them from  
5 violating the provisions of PACA and from dissipating assets subject to the  
6 PACA Trust.  
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9 On or about April 19, 2005, on behalf of Plaintiffs, the undersigned United  
10 States District Court Judge issued a Temporary Restraining Order enjoining  
11 Defendants, their counsel, agents, officers, assigns, or representatives from  
12 dissipating, paying, transferring, assigning or selling any and all assets covered  
13 by or subject to the trust provisions of the PACA without agreement of the  
14 parties or until further order of this Court.  
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17 This Court scheduled a hearing for entry of a Preliminary Injunction and  
18 ordered the Plaintiffs to serve a copy of the Temporary Restraining Order on the  
19 Defendants.  
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21 Plaintiffs have served copies of the TRO on all Defendants.  
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23 On Friday, April 29, 2005 at 9:00 a.m., the hearing on Plaintiffs’ Motion for  
24 Preliminary Injunction came before this Court.  
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26 Based upon Plaintiffs’ pleadings, the testimony and Affidavits, and the  
27 supporting documents, the Court finds that Defendant, Javier Vazquez d/b/a La  
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1 Esperanza, purchased \$52,774.30 in perishable agricultural commodities in  
2 interstate commerce from Plaintiffs, that Plaintiffs provided Defendant Javier  
3 Vazquez d/b/a La Esperanza proper notice of intent to preserve trust benefits  
4 and that Defendant Javier Vazquez d/b/a La Esperanza failed to pay Plaintiffs  
5 for the perishable agricultural commodities in violation of PACA, 7 U.S.C.  
6 §499e(c).  
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9 The Court further finds that Defendants Javier Vazquez d/b/a La  
10 Esperanza and David B. Vazquez have in fact dissipated the PACA trust by  
11 failing to maintain sufficient “freely available” assets to satisfy Plaintiffs’ PACA  
12 trust claims.  
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15 Plaintiffs have established that there is sufficient evidence of dissipation of  
16 assets subject to the PACA trust to warrant the relief granted in this order and  
17 the Court concludes that a Preliminary Injunction should be issued.  
18

19 Based on the foregoing, **IT IS HEREBY ORDERED** that:

20 1. Javier Vazquez d/b/a La Esperanza and its agents, officers,  
21 subsidiaries, assigns, financial and banking institutions, and all persons in active  
22 concert or participation with them or who receive actual notice of this Order are  
23 enjoined and restrained from dissipating, paying, transferring, assigning or  
24 selling any and all assets covered by or subject to the trust provisions of the  
25 PACA without agreement of the parties or until further order of this Court.  
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1 Under §499e(c)(2) of PACA, the assets subject to this order include all of the  
2 assets of Defendant Javier Vazquez d/b/a La Esperanza, including but not  
3 limited to any and all bank accounts at any and all financial institutions,  
4 including but not limited to those accounts at Wells Fargo Bank, unless the  
5 Defendant can prove to this Court that a particular asset is not derived from  
6 perishable agricultural commodities, inventories of food or other products  
7 derived from perishable agricultural commodities or receivables or proceeds  
8 from the sale of such commodities or products.  
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12 2. Plaintiffs shall not be required to post a bond in view of the fact that  
13 Defendant Javier Vazquez d/b/a La Esperanza now holds \$52,774.30 of PACA  
14 trust assets which belong to Plaintiffs and that this Order merely requires said  
15 Defendant to obey the requirements of the PACA.  
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17 3. Within 48 hours of the entry of this Order, the Defendant Javier  
18 Vazquez d/b/a La Esperanza shall assign all of its accounts receivable to  
19 Plaintiffs and deposit and/or deliver complete accounts, records and information  
20 of all of its accounts receivable to Plaintiffs' counsel subject to those accounts  
21 receivable being collected by Plaintiffs' counsel.  
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24 4. Defendant Javier Vazquez d/b/a La Esperanza shall endorse any  
25 checks made, endorsed or paid to it which are trust assets and which are in its  
26 possession or obtainable by it at the time of the entry of this Order, or which it  
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1 obtains or which become obtainable by it after entry of this Order, and deliver  
2 them, within 48 hours of receipt, to Plaintiffs' counsel to be held in trust pending  
3 further determination by this Court as to the distribution of those funds.  
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5         5. Defendants Javier Vazquez d/b/a La Esperanza and David B.  
6 Vazquez shall use their best efforts to cooperate with Plaintiffs in any action  
7 which Plaintiffs or their counsel may be required to take in collecting the  
8 accounts receivable or other trust assets, including any action at law or equity.  
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10         6. Immediately after the entry of this Order, Javier Vazquez and David  
11 B. Vazquez shall grant Plaintiff and its counsel, agents or employees, full,  
12 complete and continuing access to all of the books and records of Defendant  
13 Javier Vazquez d/b/a La Esperanza, which shall include but not be limited to tax  
14 returns, accounts, invoices, ledgers, computer runs, bank statements and  
15 canceled checks relating to Javier Vazquez d/b/a La Esperanza for the purpose  
16 of verifying the accounting as ordered by this Court.  
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20         7. This Order shall be binding upon Defendant Javier Vazquez d/b/a  
21 La Esperanza, and its officers (including Javier Vazquez and David B. Vazquez),  
22 agents, servants, employees, banking and financial institutions, attorneys and/or  
23 all other persons acting in concert or participating with it who receive actual  
24 notice of this Order.  
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26         8. This Order shall continue in full force and effect, except upon  
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1 further Order of this Court.

2 9. This Court shall retain jurisdiction of this action to ensure complete  
3 compliance with the terms of this Order.  
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5 **DONE AND ORDERED** in Chambers at San Jose, California this  
6 6 day of May, 2005.  
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8 /s/ Ronald M. Whyte  
9 Ronald M. Whyte  
10 United States District Court Judge  
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